

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1069 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
RAMESHBHAI BABUBHAI DHODI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR JB PARDIWALA for Petitioner

MR KP RAVAL ADDL. PUBLIC PROSECUTOR for Respondent No. 1

-----  
CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 27/02/97

ORAL JUDGEMENT

1. This Criminal Misc. Application has been filed seeking direction to quash the order passed by the learned Judicial Magistrate First Class, Umargaon and confirmed by the learned Additional Sessions Judge, Valsad in Criminal Revision Application No.509/96, rejecting the prayer of the petitioner for interim custody of the Maruti Car.

2. It is alleged that the maruti car was found carrying Indian made foreign liquor. The petitioner's prayer for interim custody has been rejected on the ground that the vehicle was used for the purpose of carrying Indian made foreign liquor in the State of Gujarat on earlier two occasions as well. It is also contended by the learned counsel for the petitioner that he is running a Travelling Agency and he was not found carrying the liquor in the car. It was further submitted that no useful purpose is going to be served by keeping the said marutivan in the custody of police.

3. Mr KP Raval, learned APP has raised preliminary objection with respect to the maintainability of the present petition u/s 482 of the Code of Criminal Procedure, which amounts to nothing but to circumvent the provisions of section 297 of the Cr.P.C., as the second revision is barred. He further submits that, even on the facts of the case and looking to the conduct of the petitioner that the vehicle has been given for carrying liquor on earlier two occasions, it is not expedient to deliver the vehicle and in any case, the matter does not call for any interference by this Court in exercise of powers u/s 482 of the Cr.P.C. Learned APP has also placed reliance on the decisions of the apex Court reported in 1995 SCC (CRI.) 1020.

4. Mr JB Pardiwala, learned counsel for the petitioner has invited my attention to the recent judgement of the apex Court reported in AIR 1997 (1) SC pg 628. It is held therein that the power of the High Court under revision is prohibited by subsection (2) of the Code of Criminal Procedure. However, the power of the High Court is available u/s 482 of the Cr.P.C. where it is considered utmost necessary to avoid the miscarriage of justice and also the multiplicity of the proceedings and unnecessary delay in trial and protection of proceedings.

5. Having considered the matter, in my view, it is a fit case which calls for interference by this Court under section 482 of the Code of Criminal Procedure. It is stated by the learned counsel that the said maruti car is of 1994 Model. The two cases in which the vehicle is alleged to have been used have yet not been decided and therefore, there is no final verdict with respect to the involvement of the said vehicle in those cases. The trial is likely to take more time and no useful purpose will be served by keeping the vehicle in the custody of the police, where by the end of the trial, it may be reduced to a scrap. Therefore, in the facts and

circumstances of the case, the ends of justice would meet if the vehicle is delivered to the petitioner for interim custody on just conditions.

6. In view of the aforesaid, this Criminal Misc. Application is allowed. The impugned order dated 5/10/96 passed by the learned J.M.F.C. - Umargam and upheld by the order dated 14/10/96 by the learned Additional Sessions Judge, Valsad in Revision Application No.509/96 are quashed and set aside. It is directed that the petitioner's application filed u/s 451 of the Code of Criminal Procedure is allowed. It is hereby directed that the vehicle - maruticar bearing No. GJ-17/A/8731 involved in the criminal case No. 370/96 registered at Umargam police station shall be delivered to the petitioner, provided that :

- (1) The petitioner furnishes a solvent security in the sum of Rs. 1,50,000/- to the satisfaction of the Judicial Magistrate First Class, at Umargam.
- (2) The petitioner will not sell or alienate or transfer in any way the vehicle in question till the final conclusion of the trial.
- (3) The endorsement on the Registration Certificate of the Vehicle with respect to the order of this Court be made.
- (4) The petitioner will also give an Undertaking that he will not use the said vehicle for similar purpose in future before the learned Magistrate.

Rule made absolute to the aforesaid extent.

\*\*\*\*\*

parmar\*